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Supreme Court of the United States

October Term, 1959

No. 18

JOHN L. LEWIS, HENRY G. SCHMIDT
and JOSEPHINE ROCHE, as Trustees
of the United Mine Workers of America
Welfare and Retirement Fund

PETITIONERS

V.

BENEDICT COAL CORPORATION

RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE
SIXTH CIRCUIT

RESPONDENT'S BRIEF

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I.

PRELIMINARY STATEMENT

Your respondent accepts the petitioners' presentation of the opinions below, the jurisdiction of this court and the statutes involved as contained in Paragraph I, II, and III of petitioners' brief. In this brief the Benedict Coal Corporation will be referred to as "Benedict" and the United Mine Workers of America and its District 28 will be referred to collectively as "The Union."

II.

QUESTION PRESENTED

Your respondent does not accept the statement of the

question presented by the petitioners and states the following as a counter-statement of the question involved:

Can the Benedict Coal Corporation use the same defense against the Trustees of the Welfare Fund that it could use against the defendant Unions, when an action is brought against Benedict by the Trustees to recover money allegedly due and owing the trust fund, when the trust fund is created by an integrated contract instrument whose respective provisions are interdependent and when Benedict among other things, agrees, to pay certain money into the fund in return for the agreement of the defendant Unions to use certain contractual provisions for the adjustment of disputes and (for a part of the period involved) for their further promise to exercise their best efforts through available disciplinary measures to prevent stoppages of work by strike or lockout pending adjustment or adjudication of disputes and grievances, when an alleged breach of the agreements by the defendant Unions impair the ability of Benedict to pay into the fund.

.III.

STATEMENT OF THE CASE

Your respondent supplements the Statement of the Case as set out by the petitioners in these regards:

The 1950 and the 1952 agreements had the following provisions:

"INTEGRATED INSTRUMENT"

"This Agreement is an integrated instrument and its respective provisions are interdependent and shall be effective from and after March 5, 1950." (R. 107a)

The 1950 contract also had provisions for the settlement of local and district disputes. It further provided:

"3. The contracting parties agree that, as a part of the consideration of this contract, any and all dis-

"R" refers to the printed record.

putes, stoppages, suspensions of work and any and all claims, demands or actions growing therefrom or involved therein shall be by the contracting parties settled and determined exclusively by the machinery provided, in the "Settlement of Local and District Disputes" section of this Agreement; or, if national in character, by the full use of free collective bargaining as heretofore known and practiced in industry.

4. The United Mine Workers of America and the Operators signatory hereto affirm their intention to maintain the integrity of this contract and to exercise their best efforts through available disciplinary measures to prevent stoppages of work or strikes or lockouts pending adjustment or adjudication of disputes and grievances in the manner provided in this agreement." (R. 106a)

The 1952 agreement eliminated Clause 4 above and amended subsection 3 to read as follows:

"3. The United Mine Workers of America and the operators agree and affirm that they will maintain the integrity of this contract and that all disputes and claims which are not settled by agreement shall be settled by the machinery provided in the 'Settlement of Local and District Disputes' section of this Agreement unless national in character in which event the parties shall settle such disputes by free collective bargaining as heretofore practiced in the industry, it being the purpose of this provision to provide for the settlement of all such disputes and claims through the machinery in this contract provided and by collective bargaining without recourse to the courts." (R 113a).

In its answer filed to the original action brought by the trustees, Benedict denied liability for the sum sought on several grounds which we consider material to the question presented to this court. The pertinent part of Benedict's answer to the original complaint was as follows:

"It is true that the Defendant hasn't paid, to the Plaintiff the alleged royalty for all the tons of coal produced, but Defendant states that during the last five years it has been operating under a contract with the United Mine Workers of America and that the United Mine Workers of America has repeatedly broken this contract to Defendant's damage. The United Mine Workers of America has had numerous unlawful strikes, has refused to arbitrate differences, and this refusal has caused a number of unlawful strikes and these Defendants have been unable to pay the alleged royalties because of the damages suffered by reason of the breach of the contracts by the United Mine Workers of America. That the details of said breaches will be set out in supplemental pleadings and in a cross-claim or counter-claim to be filed in this cause, That during the period of Defendant's operation under contracts with the United Mine Workers of America, the said United Mine Workers of America has caused strikes to be held at Defendant's mines which amounted to secondary boycotts as prohibited by the Labor Management Relations Act and which strikes further damaged Defendants and made them unable to pay the welfare royalty and the United Mine Workers of America is indebted to the respondent for the damage done by the secondary boycotts, details of which will be hereinafter set out. That the Plaintiff in this action being the beneficiary of a contract entered into between the Defendant and the United Mine Workers of America is bound by all the defenses that this defendant may assert against the United Mine Workers of America and, therefore since the United Mine Workers of America, by its breaches of contract and by its secondary boycotts has damaged Defendant and made Defendant unable to pay its welfare payments, the Plaintiff in this action is not entitled to recover anything. Furthermore, the United Mine Workers of America is indebted to Defendant in excess of any

sum that this Defendant may be indebted to the Plaintiff." (R. 18a, 19a).

It was the position of Benedict that the obligation by Benedict to make payments to the trustees was dependent upon performance by the United Mine Workers and District 28 of their obligations to Benedict and that the trustees, being beneficiaries of the agreement, were subject to the defenses arising from the conduct of the United Mine Workers of America and District 28.

IV.

SUMMARY OF ARGUMENT

The trust fund involved was created by the contract between Benedict and the Union. The provisions of this contract are interdependent. Benedict's obligation to pay royalty into the fund is dependent upon the performance of the obligations incurred by the Union. In so far as the fund provisions are concerned, the trustees are the beneficiaries of this contract.

The trustees claims against Benedict are subject to any defenses which Benedict may assert against the Union. These defenses would include non-performance, failure of consideration or set-off.

The Union breached the same contract which created Benedict's obligation to make payments to the fund. These breaches of contract by the Union are adequate defenses in this action by the trustees. It is equitable and just to permit the amount that Benedict was damaged by the Union's breach of contract to be set-off against what Benedict should be required to pay into the fund.

The petitioners' position that unpaid royalties became impressed with the trust upon the computation of the production of coal and that non-performance of the contractual obligation by the Union does not alter this obligation to pay the trustees resulting from the coal produced is untenable. It ignores the plain provisions of the contract

which indicate that the obligations are interdependent. The Union being in default in its performance of the contract, there was no obligation on the part of Benedict upon which a trust could attach. The production of coal was not the sole condition which Benedict placed upon creation of the trust res. The performance by the Union of its contractual obligations was also a condition.

The petitioners' contention that the allowance of an off-set effects the revocation of an irrevocable trust is untenable because it is based upon the same fundamental error.

The petitioners' interpretation of the "interdependent" clause of the contract is at variance with settled rules of interpretation.

The petitioners' contention that the legal implications of the Sixth Circuit's decision is to effect a satisfaction of the Union's obligation out of assets held in trust for employees and their families is also untenable. The Union being in default in its obligations, there is no obligation on the part of Benedict to pay into the fund, the royalties are not due and owing and would not be "an asset held in trust."

V.

ARGUMENT

1. The Basic Position of the Respondent

The trust fund involved was created by the contract between Benedict and The Union. The provisions of this contract are interdependent. It is fundamental that Benedict's obligation to pay royalty into the fund is dependent upon the performance of the obligations incurred by the other contracting parties, the International Union and District 28.

The trustees are not parties to this contract between Benedict and The Union. However, in so far as the fund provisions are concerned, the trustees are the beneficiaries

of this contract.

In Restatement of the Law of Contracts, 1932 Ed.:

**“Section 133. DEFINITION OF DONEE BENEFICIARY,
CREDITOR BENEFICIARY, INCIDENTAL
BENEFICIARY**

* * * * *

(3) Where it appears from the terms of the promise in view of the accompanying circumstances that the purpose of the promise is to benefit a beneficiary under a trust and the promise is to render performance to the trustee, the trustee, and not the beneficiary under the trust, is a beneficiary within the meaning of this Section.”

Since the trustees are beneficiaries of this contract, their claim against Benedict is subject to any defenses which Benedict may assert against the Union. These defenses would include non-performance, failure of consideration or setoff.

In Restatement of the Law of Contracts, 1932 Ed.:

**“Section 140. AVAILABILITY AGAINST A
BENEFICIARY OF THE PROMISOR'S
DEFENSES AGAINST THE PROMISEE:**

“There can be no donee beneficiary or creditor beneficiary unless a contract had been formed between a promisor and promisee; and if a contract is conditional, voidable, or unenforceable at the time of its formation, or subsequently ceases to be binding in whole or in part because of impossibility, illegality or the present or prospective failure of the promisee to perform a return promise which was the consideration for the promisor's promise, the right of a donee beneficiary or creditor beneficiary under the contract is subject to the same limitation.”

In 13 Corpus Juris, 699:

(Section 700) “5. Contract for Benedict of Third

Person. One who seeks to take advantage of a contract made for his benefit by another must take it subject to all legal defenses and inherent equities arising out of the contract, such as the fraud of the party procuring it, the nonperformance of conditions, or the right to a setoff, unless the element of estoppel has entered."

In Williston on Contracts, Volume Two, Section 395:

"A more difficult case arises where the defense does not relate to the origin of the contract, but is based on supervening circumstances, such as non-performance by the promisee of a counter-promise made by him, increase of risk in insurance, or discharge by the promisee by release or rescission. The defense of non-performance should be available against the third person whether he is a donee beneficiary or a creditor beneficiary. Such a defense is properly based on failure of consideration. As the substantial matter the parties had in mind was the performance of the promises the defendant promisor has in substance not received what he bargained for. Under these circumstances it is unjust to allow a mere donee to enforce the promise; and if the third person is a creditor he is not entitled to any greater right than his debtor had." (pp. 1137-1138).

In 12 Amer. Jur. 842:

"Even in jurisdictions which recognize the right of a beneficiary to enforce the contract, the agreement between the promisor and promisee must possess the necessary elements to make it a binding obligation—in other words, it must be a valid agreement between the parties to enable a third person, for whose benefit the promise is made, to sue upon it. His rights depend upon, and are measured by, the terms of the contract. The right of a third person for whose benefit a promise is made is affected with all the infirmities of the contract as between the parties to the Agreement. Unless the third person has been induced

to alter his position by relying in good faith upon the contract made for his benefit or unless a novation has been effected, the promisor may set up any defense or equity against him which he could have set up as against the promisee. Thus, in an action by the beneficiary, fraud on the part of the promisee, mistake, and want of consideration may be asserted by the promisor."

It is Benedict's position in this case that the Union breached the same contract which created Benedict's obligation to make payments to the fund. The breaches of contract by the Union are adequate defenses in this action by the trustees.

In 13 Corpus Juris, 627:

"Dependent Covenants or Promises. Where promises which form the consideration for each other are concurrent or dependent, the failure of one party to perform will discharge the other, and one cannot maintain an action against the other without showing performance, or a tender of performance, on his part, unless such performance has been excused, the general rule being that a person who has himself broken a contract cannot recover on it."

In 12 Amer. Jur. 852:

"Where the acts or covenants of the parties are concurrent and are to be done or performed at the same time, the covenants are dependent and neither party can maintain an action against the other without performance on his part."

In Restatement of Contracts, 1932 Ed. Section 274:

"Failure of Consideration as a Discharge of Duty. (1) In promises for an agreed exchange, any material failure of performance by one party not justified by the conduct of the other discharges the latter's duty to give the agreed exchange even though his promise

is not in terms conditional. An immaterial failure does not operate as such a discharge.

(2) The rule of Subsection (1) is applicable though the failure of performance is not a violation of legal duty."

It is immaterial that Benedict attempted to continue working under the contract. In 13 Corpus Juris 699:

"It is not necessary that defendant shall have rescinded his contract in order to prevent his assertion of non-performance by plaintiff as a defense to an action thereon, or to enable him to plead a failure of consideration."

It is true that Benedict attempted to continue operating under the contract. They were damaged by the breaches of contract by the Union, and this affected their ability to pay into the Fund. It is, therefore, equitable and just to permit the amount that they were damaged by the breach of contract to be offset against what Benedict should be required to pay into the Fund.

2. The Contentions of the Petitioner

(1) The petitioners first argue that unpaid royalties become impressed with the trust upon the coal production from which the royalty is computed and that non-performance of the contractual obligation by the Union does not alter the legal obligation to pay the trust res resulting from the coal produced. To adopt this position is to ignore the other plain provisions of the contract which show that the obligations are interdependent. No trust attaches to any obligation to pay at the time of the production of the coal because under the facts of this case, the royalty is not due and owing. Our position is simply that the royalty is not due and owing since Benedict's obligation to pay to the fund is dependent upon the Union's performance of other clauses of the contract. The Union was in default in its performance of these other clauses.

It is immaterial what position the trustees claim they

are taking in this action. In actuality, the trustees are the beneficiaries of the contract and subject to the defenses which Benedict has against the Union. Our position is concisely stated in this portion of the opinion by the Sixth Circuit:

"To thus construe the royalty provisions as being independent of the obligations assumed by the Unions would, be inconsistent with the agreement considered as an entirety. The 1950-52 agreement specifically provided: 'This agreement is an integrated instrument and its respective provisions are interdependent' Further, the provision requiring that the parties resort to the specified procedure for the settlement of local disputes is stated to be 'part of the consideration of this contract.' Hence we conclude (fol. 775) that the obligation to make payments to the Trustees was dependent upon performance by the Unions of their obligations, and consequently that the district court was correct in ruling that the Trustees were third party beneficiaries of the contract and subject to the defenses arising from breaches by the Unions." (R. 772, 773, *John L. Lewis, et al v. Benedict Coal Corporation*, 259 Fed. 2d 346).

The petitioners then assert that the sole condition which Benedict placed upon the creation of the trust res was the production of coal. In this assertion the petitioners again disregard the rest of the contract. The performance by the Union of its contractual obligations was also a condition. The very default which Benedict complained about was expressly stated to be "as a part of the consideration of this contract" in the Miscellaneous Section of the 1950 contract. (R. 106a). By the clear terms of the contract the production of coal was not the sole condition to the creation of the trust res.

In that portion of their brief, petitioners cite *Lewis v. Quality Coal Corporation*, 243 Fed. 2d 769. It is noted that in that case, the court expressly stated that plaintiff's title and their right to recover the money was not controverted. There was no question in that case as to non-perform-

ance by the Union of an interdependent obligation nor was there any question as to whether the money was due and owing.

We also take issue with petitioners' contention that Benedict's obligation to deliver to the trustees the trust property is a transaction wholly separate from situations upon which Benedict's claims against the Unions are predicated. As before stated, the obligations are interdependent.

(2) The petitioners also contend that the allowance of an offset effects the revocation of an irrevocable trust. This contention is based upon the same fundamental error. If the Union is in default on its performance, then Benedict is not obligated to pay to the fund. If the money is not due and owing then there is no revocation of any vested trust res.

(3) The petitioners then argue that the Sixth Circuit's conclusion that Benedict's obligation to the trustees was dependent upon Union performance is based upon a misconception of the agreement and petitioners on page 20 of their brief gave their conception of the meaning of the language:

"This instrument is an intergrated instrument and its respective provisions are interdependent."

The petitioners insist that the meaning of these words is merely to "demand the assurance that the agreement signed was the entire agreement which the Union had signed with each contracting operator and, likewise that no provision expressed in the national or industry-wide agreement had been deleted for the benefit of any one or more of such signatories." Your respondent's position is that the phrase merely means what it says. In Webster's New Collegiate Dictionary:

"interdependent Mutually or reciprocally dependent."

The petitioners' construction of this phrase is at vari-

ance with settled rules of interpretation. 12 Am. Jur. 758:

"Words will be given their ordinary meaning when nothing appears to show that they are used in a different sense and no unreasonable or absurd consequences will result from doing so. Words chosen by the contracting parties should not be unnaturally forced beyond their ordinary meaning or given a curious, hidden sense which nothing but the exigency of a hard case and the ingenuity of a trained and acute mind can discover."

4. Petitioners contend that the legal implication of the Sixth Circuit's decision is to effect a satisfaction of the Union's obligation out of assets held in trust for the employees and their families. This contention has the same basic infirmity. If the Union has defaulted on its interdependent obligations, then there is no ascertained obligation on the part of Benedict to pay into the fund. The royalties are not due and owing and would not be "an asset held in trust."

This is not analogous to an employers off setting its claim for damages against the Union against wage claims of employees. The Trustees rights to collect royalties arise solely from the collective bargaining agreement. This collective bargaining agreement is the contract that has been breached. The employees rights to wages arises not only from the collective agreement but also from the individual contract of hire between the company and each separate employee.

It may be true that a trust represents a device which deserves to be encouraged and protected, but your respondents insist that this is no reason to depart from fundamental principles of contract.

CONCLUSION

Your respondents respectfully submit that the decision of the Sixth Circuit in this cause should be sustained and that this cause be remanded in accordance with instruc-

tions heretofore set out by the Sixth Circuit.

Respectfully submitted,

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